



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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MICHAEL J. SULLIVAN
DIRECTOR

April 13, 1995
AO-95-13

Mr. Richard K. Whitney, Chairman
Prohibition Party of Massachusetts
P.O. Box 1764
Boston, MA 02205

Re: Political Designation as a Political Action Committee

Dear Mr. Whitney:

This letter is in response to your March 7, 1995 letter requesting an advisory opinion regarding the applicability of certain aspects of the campaign finance law to you in your capacity as chairman of the Prohibition Party of Massachusetts ("the Party") and its state committee, the Massachusetts Prohibition State Committee ("the Committee").

According to your letters and our records, a revised CPF Form 101 PC (Statement of a Political Action Committee or PAC) was filed on February 2, 1995 in order to comply with the requirements of M.G.L. c. 55, s. 5 as amended by chapter 43 of the Acts of 1994. The statement listed you as chairman of the Committee. Subsequently, you received a letter from Auditor Patricia Moore which advised you of recent changes in the campaign finance law. Specifically, Ms. Moore's letter noted that each political action committee must include the words, "Political Action Committee" in its name. In addition, her letter noted this office's understanding that you are a candidate for public office and, therefore, prohibited by recent changes in the campaign finance law from serving as chairman of the Committee.

You state that the Party was founded in 1870 and fielded statewide candidates until 1970 and continue to field legislative and municipal candidates. You further state that the Party is considered a "political designation" by the Secretary of State. You argue that the Committee is not a PAC and that this office's position is inconsistent with state law regarding political designations. Finally, you question the constitutionality of this office's conclusion that you may not be both a candidate and chairman of the Party or Committee.

For the reasons set forth below, it is this office's opinion that the Committee must continue to be registered as a PAC and that no candidate or elected officer may serve as a principal officer of the Committee.

The terms "political party committee" and "political action committee" or PAC are defined by the campaign finance law, M.G.L. c. 55. Specifically, a "political party committee" is defined as a political committee "organized in accordance with chapter fifty-two on behalf of a political party, as defined in section one of chapter fifty, whether elected or non-elected," while a PAC is defined as a political committee "which is not a candidate's committee, a political party committee nor a ballot question committee. . . ." In effect, a party committee is defined by specific reference to chapters 50 and 52 while a PAC is defined as any committee other than a specifically defined political committee, including a political party committee. **Since the Massachusetts Prohibition State Committee is not a political party committee, it is by definition a PAC.**¹

By definition, the term "political party" applies only to a party which has received either three percent of the entire vote cast in the commonwealth for any statewide office or has enrolled one percent of the commonwealth's registered voters under its political designation. M.G.L. c. 50, s. 1. After achieving political party status, a party may place candidates on the ballot without further evidence of voter support for the party. However, the "freedom from the need to show additional support is not an unmixed blessing: a political party is subject to considerable state regulation of its affairs, M.G.L. c. 52, and must select its candidates by a statewide primary, M.G.L. c. 53. . . ." Socialist Workers Party v. Davoren, 378 F. Supp. 1245 (Mass. 1974). In addition, political party committees are the only type of political committee, other than certain candidate committees, which must provide campaign finance disclosure through a bank reporting or depository system. M.G.L. c. 55, s. 19.

In short, the achievement of political party committee status requires a significant portion of voter support and subjects a political party committee to significant state regulation. On the other hand, any fifty registered voters may request designation as a "political designation . . . expressed in not more than three words . . ." merely by filing such a request with the Secretary of State. M.G.L. c. 50, s. 1. Even though a "political designation" may employ the word "party" as in the case of the "Prohibition Party," a "political designation" is not subject to the extensive statutory regulations applicable to a political party or its state committee.

¹ If a political action committee limits the amount of contributions to \$100 or less and meets certain additional criteria, it may change its status to a "people's committee." A candidate may serve as a principal officer of a people's committee. However, according to the Committee's campaign finance reports on file with this office, the Committee has received contributions greater than \$100. Therefore, the Committee is not eligible to change its status to a people's committee. See OCPF-IB-94-02.

Treating a PAC organized by a political designation differently than a political party committee is consistent with the manner in which PACs and political designations operate. Until a political designation becomes a political party committee, it is more like a political action committee than a political party committee. Indeed, many PACs which have not chosen to seek status as a political designation have larger memberships than some political designations.

In addition, it is well settled that restrictions on the rights of political parties to place candidates on the ballot impinge upon fundamental First and Fourteenth Amendment rights. See Munro v. Socialist Workers Party, 479 U.S. 189 (1986). Such rights, however, "are not absolute and are necessarily subject to qualification if elections are to be run fairly and effectively." Storer v. Brown, 415 U.S. 724, 730 (1974). Therefore, states have a clear right to require "a significant modicum of support before printing the name of a political organization's candidate on the ballot - the interest, if no other, in avoiding confusion, deception, and even frustration of the democratic process at the general election." Jenness v. Fortson, 403 U.S. 431, 442 (1971). See also American Party of Texas v. White, 415 U.S. 767 (1974), which upheld a Texas statute imposing a ballot access percentage requirement scheme not unlike the Massachusetts plan. This line of cases stands for the proposition that established political parties may be treated differently than other political organizations.²

Consistent with these constitutional principles, Massachusetts campaign finance law requires political action committees to "include the words 'Political Action Committee' in [the committee's] name. . . ." Moreover, as of January 1, 1995, a candidate or elected official may not serve "as a principal officer of a political action committee" which would include the chairman, treasurer, secretary and finance committee officers of a political committee. See M.G.L. c. 55, ss. 5 and 5A. See also AO-95-06. In addition, section 5A, enacted to prevent candidates and elected officials from not only raising funds for their own campaigns but also raising funds indirectly through a PAC, prohibits a candidate or elected officer from establishing, financing, maintaining or controlling a PAC. Finally, individuals may contribute only \$500 to a PAC compared to \$5,000 which may be contributed to a political party committee and a PAC may contribute only \$500 to candidates while a party committee may contribute \$3,000 to a candidate and provide unlimited in-kind contributions to a candidate. See M.G.L. c. 55, ss. 6 and 7A.


² Indeed, if political party committees were treated in the same manner as political designations, the Supreme Court has "intimated that the claim of constitutional violation . . . should be made by the political party which was being forced to maintain an elaborate superstructure, conduct a primary, and so on, when none of these requirements are placed on other political groups." See Socialists Workers Party, *supra* at 1250.

In conclusion, since the Committee is a PAC and not a political party committee, the Committee is subject to all the provisions of chapter 55 applicable to PACs. Therefore, the Committee must use the words "Political Action Committee" in its name and no candidate or elected official may serve as a principal officer of the Committee.³

This opinion has been rendered solely on the basis of representations made in your letter and solely in the context of M.G.L. c.55.

Please do not hesitate to contact this office should you have additional questions about this or any other campaign finance matter.

Sincerely,


Michael J. Sullivan
Director

³ The campaign finance law prohibits a candidate from serving as a principal officer of a PAC, i.e. the Committee. However, a candidate may serve as a principal officer of the Prohibition Party. See M.G.L. c. 55, s. 5A.